

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JASON CANTRELL #397429,

Plaintiff,

NO. 1:18-cv-1163

v

HON. JANE M. BECKERING

ANTHONY HEILIG and
SCOTT ARP,

MAG. PHILLIP J. GREEN

Defendants.

Laurence H. Margolis (P69635)
Ian T. Cross (P83367)
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At a session of said Court, held in the
City of Grand Rapids, Kent County, State of Michigan
on _____

PRESENT: HONORABLE JANE BECKERING
USDC JUDGE

FINAL PRETRIAL ORDER

A final pretrial conference was held on the 22nd day of September 2022. Appearing for the parties as counsel were:

- Ian T. Cross, Jinan M. Hamood, and Laurence H. Margolis for Plaintiff.
- O.G. Reasons and James Keathley for Defendants

(1.) Exhibits: The following exhibits will be offered by the plaintiff and the defendants:

Plaintiff's Exhibits:

Exhibit Number	Description	Offered By	Objection	Date Offered	Date Received
1	2017 MDOC Statistical Reports	Plaintiff	Relevance, FRE 401, 402, Hearsay, FRE 801, 802		
2	Bellamy Creek Correctional Facility - Google Maps Aerial Photo	Plaintiff	Relevance, FRE 401, 402		
3	Aerial Photo Detail of Unit 2 and Building w/ Segregation Unit	Plaintiff	Relevance, FRE 401, 402		
4	Deposition of Scott M. Arp in Doe v. Austin, Oct. 17, 2016	Plaintiff	Relevance, FRE 401, 402, Hearsay, FRE 801, 802, FRCP 43		
5	MCO Collective Bargaining Agreement	Plaintiff	Relevance, FRE 401 402		
6	MDOC PA 107 Critical Incident Reports- 2017 Data	Plaintiff	Relevance, FRE 401, 402, Hearsay, FRE 801, 802		
7	MDOC PA 107 Critical Incident Reports- 2020 Data	Plaintiff	Relevance, FRE 401, 402, Hearsay, FRE 801, 802		
8	MDOC Employee Handbook	Plaintiff	Relevance, FRE 401 402		
9	Michigan Civil Service Commission –	Plaintiff	Relevance, FRE 401 402		

	Corrections Officer Job Specification				
10	Michigan Civil Service Commission – Corrections Shift Supervisor Job Specification	Plaintiff	Relevance, FRE 401, 402, Hearsay, FRE 801, 802		
11	PD 01.01.140	Plaintiff	Relevance, FRE 401, 402,		
12	PD 01.04.110	Plaintiff	Relevance, FRE 401, 402		
13	PD 01.04.140	Plaintiff	Relevance, FRE 401, 402		
14	PD 01.05.100	Plaintiff	Relevance, FRE 401, 402		
15	PD 01.05.120	Plaintiff	Relevance, FRE 401, 402,		
16	PD 02.01.103	Plaintiff	Relevance, FRE 401, 402		
17	PD 02.03.100	Plaintiff	Relevance, FRE 401, 402,		
18	PD 03.03.105	Both			
19	PD 03.03.130	Plaintiff	Relevance, FRE 401, 402		
20	PD 04.04.110	Both			
21	PD 04.05.110	Plaintiff	Relevance, FRE 401, 402,		
22	PD 04.05.112	Plaintiff	Relevance, FRE 401, 402,		
23	PD 04.05.120	Plaintiff	Relevance, FRE 401, 402		
24	Surveillance Video	Both			
25	Still Photographs Captured from Surveillance Video	Plaintiff			

26	ECD Video	Both			
27	Still Photographs Captured from ECD Video	Plaintiff			
28	Plaintiff's Relevant Medical Records	Both			
29	Misconduct Hearing Report	Plaintiff	Relevance, FRE 401, 402, Hearsay, FRE 801, 802		
30	Critical Incident Report and Critical Incident Participant Reports	Plaintiff	Hearsay, FRE 801, 802		
31	Heilig & Arp Employee Handbook Acknowledgements	Plaintiff	Relevance, FRE 401 402		
32	Prisoner Misconduct Hearings Handbook	Plaintiff	Relevance, FRE 401, 402, Hearsay, FRE 801, 802		
33	Arp Oath of Office	Plaintiff	Relevance, FRE 401 402		
34	Heilig Oath of Office	Plaintiff	Relevance FRE 401 402		
35	HU 2 Logbook	Plaintiff	Relevance, FRE 401, 402, Hearsay, FRE 801, 802		
36	Visual aides (powerpoint) in opening and/or closing	Plaintiff	Defense has not reviewed any visual aides and therefore reserves objection for any grounds Defense determines appropriate		

Defendants' Exhibits:

Exhibit Letter	Description	Offered By	Objection	Date Offered	Date Received
A.	Surveillance Video	Defense			
B.	ECD Video	Defense			
C.	Still Photographs Captured from ECD Video	Defense			
D.	PD 04.04.110	Defense			
E.	PD 03.03.105A	Defense			
F.	08/19/2017 Shift Schedule	Defense			
G.	Plaintiff's Relevant Medical Records	Defense			
H.	Internal Affairs Complaint – AIM #22038 Report	Defense	Relevance, FRE 401, 402, Hearsay, FRE 801, 802		
I.	MDOC Officer-Subject Control Continuum	Defense	Plaintiff has not reviewed this proposed exhibit and therefore reserves objection for any grounds Plaintiff determines appropriate		

(2.) Uncontroverted Facts: The parties have agreed that the following may be accepted as established facts:

- a. At all relevant times, Plaintiff was a prisoner confined at Bellamy Creek Correctional Facility.
- b. At all relevant times, Defendants were corrections officers employed at Bellamy Creek Correctional Facility.
- c. At all relevant times, Defendants were acting under the color of the law.

Plaintiff proposes to include subparagraphs (d) – (r) as uncontroverted facts. Defendants object.

- d. On August 19, 2017, at approximately 7:15 PM, Defendant Heilig conducted a search of Plaintiff's cell.
- e. Plaintiff was not present during Defendant Heilig's search of Plaintiff's cell.
- f. Plaintiff was returned to his cell sometime after the conclusion of Defendant Heilig's search.
- g. Plaintiff's cell door was opened at approximately 8 PM for medication lines.
- h. While Plaintiff's cell door was open for medication lines, Plaintiff stepped out and requested to speak with a sergeant.
- i. Defendant Heilig instructed Plaintiff to return to his cell.
- j. Plaintiff returned to his cell but remained in the doorway of the cell.
- k. Defendant Heilig called for assistance and then placed Plaintiff in handcuffs.
- l. Defendant Arp arrived to assist Defendant Heilig in escorting Plaintiff to the segregation unit of the prison.
- m. Defendants owed Plaintiff a duty to refrain from the use of force maliciously and sadistically for the very purpose of causing him harm.
- n. At some point during the escort, Plaintiff ended up on the ground with Defendants holding him down.
- o. Sometime between 8:15 AM and 8:30 AM Plaintiff was placed in the prison's segregation unit.
- p. Plaintiff was later treated at the facility medical clinic, both onsite and offsite, where X-rays revealed he had fractures of ribs nine and ten on the left side near the rib angles.
- q. On August 19, 2017, Defendant Heilig issued Plaintiff a "Misconduct Report charging Plaintiff with the Class I charge of Assault and Battery (Staff Victim).
- r. On August 23, 2017, Hearing Officer S. Burke issued a Class I misconduct Hearing Report wherein she found Plaintiff not guilty of the Class I charge of Assault and Battery (Staff Victim),

(3.) Controverted Facts and Unresolved Issues: The factual issues remaining to be determined and issues of law for the Court's determination are:

- Did Defendants use excessive force against Plaintiff on August 19, 2017?

(4.) Witnesses:

- a. Non-expert witnesses to be called by the plaintiff and the defendants, except those who may be called for impeachment purposes only, are:

Plaintiff's Witness List:

Name	Address	Telephone Number	Method of Testimony	Objections	Will Call/ May Call
Jason Cantrell	C/O Plaintiff's Counsel, 402 W. Liberty St. Ann Arbor MI 48103	C/O Plaintiff's Counsel, 734-994-9590	Live		Will Call
Scott Arp	Grandview Plaza, 206 E. Michigan Ave., Lansing, MI 48909	517-335-1426	Live		Will Call
Gary Stump	Grandview Plaza, 206 E. Michigan Ave., Lansing, MI 48909	517-335-1426	Deposition/ In person if Defendant's object to the reading of Mr. Stump's deposition	Hearsay FRE 801 802, FRCP 43	May Call
Keith Earegood	Grandview Plaza, 206 E. Michigan Ave., Lansing, MI 48909	517-335-1426	In person		May Call
Brady Kammers	Grandview Plaza, 206 E. Michigan Ave., Lansing, MI 48909	517-335-1426	In person		May Call
Scott Gilbert	Grandview Plaza, 206 E. Michigan Ave., Lansing, MI 48909	517-335-1426	In person		May Call
David Verhaar	Grandview Plaza, 206 E. Michigan Ave.,	517-335-1426	In person		May Call

	Lansing, MI 48909				
MDOC/IBC Records Custodian	Grandview Plaza, 206 E. Michigan Ave., Lansing, MI 48909	517-335- 1426	In person		May Call
Anthony Heilig	Grandview Plaza, 206 E. Michigan Ave., Lansing, MI 48909	517-335- 1426	In person		Will Call
Lt. S. Gilbert	Grandview Plaza, 206 E. Michigan Ave., Lansing, MI 48909	517-335- 1426	In person		May Call
S. Burke	Grandview Plaza, 206 E. Michigan Ave., Lansing, MI 48909	517-335- 1426	In person	The subpoena for this witness has already been quashed per ECF No. 129 Page ID. 1044 dated 07/29/2022	May Call

Additionally, Plaintiff reserves the right to call:

- All witnesses listed in Defendants' witness list, whether or not called to testify;
- Custodian of any records offered by the parties;

- All necessary rebuttal, foundation, and impeachment witnesses whether called to provide fact or expert testimony; and

Plaintiff further reserves the right to add additional witnesses as they become known and necessary throughout the course of these proceedings.

Defendants' Witness List:

Name	Address	Telephone Number	Method of Testimony	Objections	Will Call/ May Call
Anthony Heilig	Grandview Plaza, 206 E. Michigan Ave., Lansing, MI 48909	517-335-1426	In person		Will Call
Scott Arp	Grandview Plaza, 206 E. Michigan Ave., Lansing, MI 48909	517-335-1426	In person		Will Call
Keith Earegood	Grandview Plaza, 206 E. Michigan Ave., Lansing, MI 48909	517-335-1426	In person		May Call
David Verhaar	Grandview Plaza, 206 E. Michigan Ave., Lansing, MI 48909	517-335-1426	In person		May Call
Brady Kammers	Grandview Plaza, 206 E. Michigan Ave., Lansing, MI 48909	517-335-1426	In person		May Call
Scott Gilbert	Grandview Plaza, 206 E. Michigan Ave., Lansing, MI 48909	517-335-1426	In person		May Call

Gary Stump	Grandview Plaza, 206 E. Michigan Ave., Lansing, MI 48909	517-335-1426	In person		May Call
Kevin Corning	Grandview Plaza, 206 E. Michigan Ave., Lansing, MI 48909	517-335-1426	In person		May Call
MDOC/IBC Records Custodian	Grandview Plaza, 206 E. Michigan Ave., Lansing, MI 48909	517-335-1426	In person		May Call

b. Expert witnesses to be called by the plaintiff and the defendants, except those who may be called for impeachment purposes only, are:

Plaintiff: N/A

Defendants: N/A

c. It is understood that, except upon a showing of good cause, no witness whose name and address does not appear in the lists required by subsections (a) and (b) will be permitted to testify for any purpose, except impeachment, if the opposing parties object. Any objection to the use of a deposition under Fed. R. Civ. P. 32(a) not reflected in the Pretrial Order shall be deemed waived, except for good cause shown.

(5.) Depositions and Other Discovery Documents: All depositions, answers to written interrogatories, and requests for admissions, or portions thereof, that are expected to be offered in evidence by the plaintiff and the defendant are:

Plaintiff intends to read the deposition of Gary Stump into the record in its entirety.

Defendant objects on the basis of FRE 801 and 802, additionally on the basis of FRCP 43.

(6.) Length of Trial: Counsel estimate the trial will last approximately two full days, allocated as follows: One (1) day for plaintiff's case; One (1) day for defendants' case.

(7.) Form of Alternate Dispute Resolution: The form of Alternate Dispute Resolution selected was Settlement Conferences. The outcome was unsuccessful for

the following reasons: The parties were at significant odds in terms of monetary settlement offers.

(8.) Prospects of Settlement: The current status of settlement negotiations is: Plaintiff and Plaintiff's counsel, along with Defendants' representative and Defendants' counsel, appeared in front of Judge Green for a settlement conference on September 7, 2022. Settlement does not seem likely based on the results of that conference.

Dated: _____

JANE M. BECKERING
UNITED STATES DISTRICT JUDGE

APPROVED AS TO CONTENT AND FORM:

/s/ OG Reasons w/Permission
OG Reasons (P80463)
Counsel for Defendant

/s/ Ian T. Cross
Ian T. Cross (P83367)
Laurence H. Margolis (P69635)
Counsel for Plaintiff

/s Jinan M. Hamood
Jinan M. Hamood (P77315)
Co-Counsel for Plaintiff